

**FILED**

**SEP 20 2010**

**PATRICK E. DUFFY, CLERK**

**By** \_\_\_\_\_  
**DEPUTY CLERK, MISSOULA**

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF MONTANA**

**MISSOULA DIVISION**

|                                     |   |                    |
|-------------------------------------|---|--------------------|
| INTERVEST-MORTGAGE                  | ) | CV 10-25-M-DWM-JCL |
| INVESTMENT COMPANY,                 | ) |                    |
|                                     | ) |                    |
| Plaintiff,                          | ) |                    |
|                                     | ) |                    |
| vs.                                 | ) | ORDER              |
|                                     | ) |                    |
| CANYON HOLDINGS, LLC, a             | ) |                    |
| Delaware limited liability company, | ) |                    |
|                                     | ) |                    |
| Defendant.                          | ) |                    |
| _____                               | ) |                    |

This is a judicial foreclosure action commenced by Plaintiff Intervest-Mortgage Investment Company on March 23, 2010 against Defendant Canyon Holdings, LLC involving a loan transaction secured by real property in Missoula, Montana. The Complaint alleges this Court's jurisdiction is founded upon

diversity of citizenship pursuant to 28 U.S.C. § 1332(a)(1).

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation (dkt #40) in this case on August 26, 2010. After a hearing on Defendant's Motion to Dismiss on August 25, 2010, Judge Lynch determined that a preponderance of the evidence demonstrates that the sole member of Defendant Canyon Holdings, LLC is domiciled in the State of Washington. He further determined that as a corporate entity, Plaintiff Intervest-Mortgage Investment Company is deemed a citizen of Washington where it has its principal place of business. Plaintiff did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Judge Lynch found that diversity is lacking in this case, and the case must be dismissed. I can find no clear error with Judge Lynch's Findings and Recommendation.

IT IS HEREBY ORDERED that Judge Lynch's Findings and Recommendation (dkt #40) are adopted in full.

IT IS FURTHER ORDERED that Defendant's Rule 12(b)(1) Motion to Dismiss (dkt #10) is GRANTED.

Dated this 25<sup>th</sup> day of September, 2010.



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Donald W. Molloy, District Judge  
United States District Court

